

## REMARKS

This communication is in response to the non-final Office Action that issued August 3, 2009. Claims 9, 11-13, and 44-52 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over the U.S. Patent No. 5,152,749 ("the '749 patent") in view of U.S. Patent No 6,723,107 ("the '107 patent").

### Claim Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 9, 11-13, 44-52 under 35 U.S.C. § 103(a) as allegedly being obvious over the '749 patent in view of the '107 patent. Applicants respectfully traverse the instant rejection.

In the instant rejection, the Examiner relied on the '107 patent for disclosing "a narrowing for locking the looped connector into the second leg" as required by independent claim 9. The Examiner stated that Figure 20 in the '107 patent discloses this limitation. The Examiner's assertion, however, mischaracterizes the locking mechanism in Figure 20 as it requires a separating locking element to engage a suture rather than relying on the narrowing of the second leg to lock the "loop connector" in place. The '107 patent at column 4, lines 44 through column 5, lines 16 discloses how the locking element (designated as 1904 in Figure 19 and represented by the cylindrical element moving in the directions designated by 2002) moves from the open position to the closed position to capture the suture. Specifically, the '107 patent states that:

Locking element 1904 is controlled by the device operator with button 1804 (FIG. 18). Locking element 1804 may be selectively placed in (1) an open position for inserting a suture into an opening in the sharpened tip and for release of the suture from the opening in the sharpened tip; (2) at least one partially closed position for capturing the suture and for controlled adjustment of the suture relative to the tip; and (3) a locked position for trapping a suture in the opening in the sharpened tip

at a selected point. *See* Col. 4, lines 51-60.

Because the '107 patent requires a separate mechanism to lock the suture in place, the '107 patent necessarily does not disclose "a narrowing for locking the looped connector into the second leg" that is required by independent claim 9. As a result, all of the claim limitations are not found in the '107 patent. These deficiencies are not cured by the '749 patent. Thus, a *prima facie* case of obviousness has not been set forth for independent claim 9. The same holds true for those claims that depend from this independent claim. As a result, claims 11-13 and 44-52 are non-obvious as well.

In view of the foregoing, the Examiner's rejections under 35 U.S.C. § 103(a) of claims 9, 11-13, and 44-52 are believed to be overcome. It is, therefore, respectfully requested that the Examiner withdraw this rejection.

### CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is respectfully requested.

In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the Examiner would contact the undersigned attorney by telephone at (202) 373-6000 so that prosecution of the application may be expedited.

The Director is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4047.

Respectfully submitted,

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